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## Form 5502—General Provisions for Design-Build Contracts

### *Section A, All Contracts—Mandatory Clauses*

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All the clauses below apply to this contract, unless specifically deleted in this contract or identified in the clause as being self-deleting.

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## **A1, General Terms**

(a) The University has agreed to appropriately treat requirements of federal statutes and Presidential executive orders in procurements using funds provided under Contract W-7405-ENG-36. Consequently, many of the standard terms and conditions contained herein are similar to terms and conditions used by federal agencies. However, the University is not a federal instrumentality or agency; the use of similar terms and conditions is only for administrative convenience of the University.

(b) The Contractor shall furnish the goods and/or services covered by the contract subject to all the terms and conditions set forth in the contract, which the Contractor, in accepting the contract, agrees to be bound by and to comply with in all particulars, and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. The terms of any proposal referred to in the contract are included and made a part of the contract only to the extent of specifying the nature of the goods or services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the general provisions of the contract.

## **A2, Definitions**

As used in this contract, the following terms have the meanings stated:

(a) *Architect-engineer services*—(1) professional services of an architectural or engineering nature required to be performed or approved by a person licensed, registered, or certified to provide such services; (2) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and (3) such other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals.

(b) *contract*—the term, when not used in conjunction with “W-7405-ENG-36” means the contractual instrument entered into by the Contractor and the University in which this document, Form 5502, is identified as being a part.

(c) *Contract Administrator*—the representative of the University authorized to address contractual issues and to execute and administer contracts on behalf of the University.

(d) *Contracting Officer*—the representative of DOE with the authority to enter into, administer, and/or terminate Contract W-7405-ENG-36 and make related determinations and findings.

(e) *Contractor*—The term *Contractor* when capitalized means the legal entity that has entered into this contract with the University.

(f) *DEAR*—the Department of Energy Acquisition Regulation.

(g) *DOE*—the United States Department of Energy.

(h) *FAR*—the Federal Acquisition Regulation.

(i) *Goods*—all tangible property, except land or interest in land, and including tooling, equipment, materials, supplies, etc., required for or produced in the performance of the contract.

(j) *Government*—the government of the United States of America.

(k) *Government Contracting Officer*—a representative of the Government with the authority to enter into, administer, and/or terminate Government contracts and make related determinations and findings.

(l) *Head of Agency*—the Secretary, Deputy Secretary, or Under Secretary of DOE.

(m) *LANL*—Los Alamos National Laboratory, a highly specialized facility of DOE and federally funded research and development center in Los Alamos, New Mexico.

(n) *Subcontractor*—an individual or legal entity that has entered into an agreement with the Contractor for the delivery of goods or services necessary for the Contractor's performance of this contract.

(o) *University*—the Regents of the University of California, a constitutional corporation and instrumentality of the State of California, which operates LANL under Contract W-7405-ENG-36 for DOE.

## **A3, Performance and Payment Bonds and Additional Bond Security**

(a) **Definition.** As used in this clause, *contract price* means the award price of the contract.

(b) Unless the resulting contract price is \$100,000 or less, the successful offeror shall be required to furnish performance and payment bonds to the Contract Administrator as follows:

**(1) Performance Bonds (Standard Form 25):**

(i) The penal amount of performance bonds shall be 100% of the original contract price that is allocable to construction.

(ii) If the contract price increases, the University may require additional performance bond protection, generally equal to 100% of the increase in construction costs.

(iii) The University may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

**(2) Payment Bonds (Standard Form 25-A):**

(i) The penal amount of payment bonds shall equal—

(A) 50% of a construction costs that is not more than \$1 million;

(B) 40% of a construction costs that is more than \$1 million but is not more than \$5 million; or

(C) \$2.5 million if the construction costs is more than \$5 million.

(ii) If the original contract price is \$5 million or less, the University may require additional protection if the contract price is increased. The penal amount of the total protection shall meet the requirement of (b)(2)(i) of this clause.

(iii) The University may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contract Administrator, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by him but in any event before starting any onsite work.

(d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list in Treasury Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accord with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW, 2nd Floor, West Wing, Washington, DC 20227.

(e) The Contractor shall promptly furnish additional security required to protect the Government and University and persons supplying labor or materials under this contract if—

(1) Any surety upon any bond furnished with this contract becomes unacceptable to the University;

(2) Any surety fails to furnish reports on its financial condition as required by the University; or

(3) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the University.

**A4, Prospective Subcontractor Requests for Bonds**

(a) This clause does not apply to architect-engineer services under the contract.

(b) In accordance with §806(a)(3) of Pub. L. 102-190, as amended by §§2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier of labor or material for performance of this contract for which a payment bond has been furnished to the University and the Government under the *Miller Act*, the Contractor shall promptly provide a copy of such payment bond to the requester.

**A5, Protest After Award**

(a) Upon receipt of a notice of protest—as defined in University of California Standard Procedure 33.1 (SP 33.1)—or a determination that a protest is likely (see SP 33.1), the Contract Administrator may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contract Administrator shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the default or termination for convenience provisions of this contract

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. If (1) the stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and (2) the Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage, the Contract Administrator shall make an equitable adjustment in delivery schedule or contract price, or both, and modify the contract in writing, accordingly, provided, that if the Contract Administrator decides the facts justify the action, he may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and covered work is terminated for convenience, the Contract Administrator, in the termination settlement, shall allow reasonable costs resulting from the order.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the order.

(e) The University's right to terminate this contract at any time is not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the University pays costs similar to those provided in FAR 33.102(b)(2) or 33.104(h)(1), the University may require the Contractor to reimburse such costs. In addition to any other remedy available, and pursuant to requirements of FAR 32.6 as may be applicable to this contract, the University may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the University.

#### **A6, Predesign and Preconstruction Conferences**

The Contractor will be required to attend predesign and preconstruction conferences and will be notified as to date, time, and location of each conference, any need for attendance by subcontractors, and agenda information.

#### **A7, Work Oversight for Services**

The extent and character of services performed under this contract are subject to the general oversight, supervision, direction, control, and approval of the Contract Administrator.

#### **A8, Responsibility for Architect-Engineer Services**

(a) In performing architect-engineer services, the Contractor shall comply with the specifications or other technical guidance furnished by the University. The Contractor shall comply with the applicable requirements for all facility designs with regard to any new facility, facility addition, or alteration or facility lease undertaken pursuant to this contract, including on-site constructed buildings, pre-engineered buildings, and plan-fabricated modular buildings.

(b) Under the Quality Assurance Program agreed to in negotiation of this contract, the Contractor shall ensure the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other architect-engineer services furnished by the Contractor and shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such work.

(c) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(d) If the University or Government claims the Contractor is liable to it under provisions above, the parties shall attempt in good faith to resolve the claim. After a reasonable time and good-faith effort expended at resolution, the University may elect to resolve the claim under the *Disputes/Arbitration* clause.

(e) The University's review, approval or acceptance of, or payment for, services under this contract shall not waive any rights under this contract or of any cause of action arising out of the performance of this contract, including rights or causes of action arising under this clause.

(f) The rights and remedies of the University and the Government provided for under this contract are in addition to any other rights and remedies provided by law.

### **A9, Permits, Responsibilities, and Registration Requirements**

(a) Without additional expense to the University or Government, the Contractor shall be responsible for all materials delivered onsite and work performed until completion and acceptance of the entire work (except for any completed unit of work which may have been accepted under the contract).

(b) The Contractor shall obtain any necessary licenses and permits and comply with any Federal, State, Tribal, County, and Municipal laws, codes, and regulations applicable to work performance. Such responsibility and compliance shall be without additional expense to the University or Government. Design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers licensed, registered, or certified to practice in the particular professional field in a State or possession of the United States, or in Puerto Rico or the District of Columbia.

### **A10, Specifications and Drawings**

(a) **University-Furnished Specifications and Supplemental Technical Guidance.** Except as indicated otherwise by the University, such as by written conditions accompanying drawings or other information, this provision (a) applies to the original specifications furnished by the University to the Contractor and to any supplemental technical guidance, including any design-build program document(s), furnished by the University to the Contractor.

(1) *Directed, required, ordered, designated, prescribed, or words of like import* refer to the *direction, requirement, order, designation, or prescription*, of the Contract Administrator, and similarly the words *approved, acceptable, satisfactory*, or words of like import mean *approved by, or acceptable to, or satisfactory to* the Contract Administrator, unless otherwise expressly stated.

(2) *As shown, as indicated, as detailed, or words of similar import, unless stated otherwise, refer to drawings (including sketches) originally accompanying or supplementing this contract. Provided means provide complete in place, that is designed, furnished, and installed.*

(3) In case of discrepancy in any University-furnished figures, drawings, or specifications—whether such discrepancy is internal to the set or as compared to other figures, drawings, or specifications furnished by the University or developed by the Contractor—the Contractor shall promptly submit the matter to the Contract Administrator, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at the Contractor's own risk and expense.

#### **(b) Contractor-Developed Drawings, etc.**

(1) **Title and Use.** Title to and use of all designs, drawings, specifications, notes, and other informational work developed in performance of this contract are governed by the clause entitled *Drawings and Other Data to Become Property of Government*.

(2) **Quality Assurance.** In accordance with the Quality Assurance Program agreed to during negotiations of this contract, the Contractor shall coordinate all such drawings, specifications, notes, and other informational work developed in contract performance and review them for accuracy, completeness, and compliance with contract requirements. Delivery to the University of informational copies of such materials shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor for complying with contract requirements, except as to variations described and approved in accordance with (b)(3) below.

(3) **Variations in Drawings.** If drawings show variations from contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, in a proposal to the Contract Administrator for contract modification. If the Contract Administrator approves any such variation, he shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price/fee or in time of performance, a modification need not be issued.

(4) **Project Record Drawings.** Upon completing the contract work, the Contractor shall furnish complete project record drawings. These shall (i) show all changes and revisions made up to the time the elements, materials, equipment, etc. are completed and accepted; and (ii) be stamped or sealed by an architect or engineer who meets the licensing and registration requirements of this contract for rendering architect-engineer services.

(c) **Work Site Copies.** The Contractor shall keep on the construction work site a copy of all designs, drawings, specifications, notes, and other informational work pertaining to the contract. The Contractor shall at all times give the Contract Administrator and DOE access thereto.

(d) The contractor shall insert this clause, including this paragraph, in all subcontracts at every tier that require submittal or use of designs, drawings, specifications, notes, or other informational work.

### **A11, Layout of Work**

The Contractor shall lay out its construction work from base lines and bench marks indicated in the specifications and other technical guidance furnished by the University, or as indicated in the base lines and bench marks as agreed upon by the parties, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish at its own expense all stakes, templates, platforms, equipment, tools, materials, and labor to lay out any part of the work. The Contractor shall execute the work to the lines and grades required by the University or agreed on by the parties. If the University has established any stakes or other marks for construction, the Contractor shall preserve and protect them until authorized to remove them. If such stakes or marks are destroyed by the Contractor directly or through its negligence before their removal is authorized, the University may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

### **A12, Material and Workmanship**

(a) As used in this clause, *specifications* refers to the latest amendment of the specifications originally included in this contract on its execution, plus later specifications developed as approved changes or additions.

(b) All equipment, material, and articles incorporated into the construction shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, establish a standard of quality and do not limit competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the Contract Administrator's judgment, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(c) The Contractor shall obtain the Contract Administrator's approval of the machinery and mechanical and other equipment to be incorporated into the construction work. When requesting approval, the Contractor shall furnish to the Contract Administrator the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contract Administrator, the Contractor shall also obtain the Contract Administrator's approval of the material or articles that the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Any machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(d) All work shall be performed in a skillful and workmanlike manner. The University may require, in writing, the Contractor to remove from the work any employee the University deems incompetent, careless, or otherwise objectionable.

### **A13, Operations and Storage Areas**

(a) This clause applies only to onsite work. Except as otherwise provided in this contract or by direction of the University, the University may make available designated Government or University premises for use by the Contractor without cost whenever such use will not interfere with other operations. The following provisions will govern the Contractor's use of such premises:

(1) **Hold Harmless.** The Contractor shall hold and save the University and Government, and their officers, employees, guests, and agents, free and harmless from liability of any kind occasioned by the Contractor's performance and use of such premises. Furthermore, if the Contractor abandons the performance of this contract work or if the Contractor's right to proceed is terminated pursuant to the clause entitled *Default-Fixed-Price Design-Build*, the Contractor shall hold and save the University and Government, and their officers, employees, guests, and agents free and harmless from liability of any kind arising from the University's taking possession of such construction materials and equipment for completion of the work of this contract.

(2) **Limitation of Operations.** All operations of the Contractor, including storage of materials and equipment, on Government or University premises shall be limited to those purposes and confined to those areas authorized and approved by the Contract Administrator or other provisions of this contract. Only construction materials and equipment to be used for the performance of this contract work may be stored in the designated areas.

(3) **Temporary Facilities.** (i) Under other provisions of this contract, the University may provide some utilities and certain utility connect/disconnect services free or at cost to the Contractor. (ii) Failing such other provisions, then in such locations designated by the University for the following purposes, the Contractor may create at its own



expense temporary facilities—including erection of buildings (e.g., warehouse facilities, storage sheds, shops, and offices), installation of utilities, and establishing of storage or stockpile areas as may be necessary to prosecute the contract work. Such facilities shall be built with labor and materials furnished by the Contractor without expense to the University or Government. All such facilities shall remain the property of the Contractor and, unless otherwise authorized by the Contract Administrator, shall be removed from the premises at the Contractor's expense upon completion of the work or when directed by the Contract Administrator. In either case, prior to final acceptance of contract work, the Contractor shall have removed all such facilities and vacated the premises, leaving the premises in a condition satisfactory to the Contract Administrator. Only if the Contract Administrator decides (in consultation with DOE) that it is in the interest of the Government's and gives his written consent, may some or all of the facilities be abandoned and not removed.

**(4) Responsibilities.** **(i)** The Contractor shall maintain the premises, all structures or other facilities on the premises, whether or not constructed by the Contractor, and all areas identified for access to the premises in a safe, sanitary and attractive condition. **(ii)** The Contractor shall not make or allow any abuse or destruction of the premises, including disturbance or destruction of trees. **(iii)** The Contractor shall not permit any person, whether or not in the Contractor's or its subcontractors' employ, to be housed on the premises. **(iv)** Under other provisions of this contract, the University may provide the Contractor with some trash or garbage collection services (or other services) either free or at cost; failing such other provisions, the Contractor shall be responsible for preparing the premises for use, arranging for trash or garbage collection and providing services that may be necessary for the Contractor's use of the premises.

**(5) Roadways and Vehicles.** Under rules prescribed by the Contract Administrator, the Contractor shall use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contract Administrator. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any applicable Federal, State, Tribal, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. At no additional cost to the University, the Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

**(b) Bulletin Board.** The Contractor shall provide and maintain during the entire period covered by this Contract a weather-tight bulletin board approximately 3' high by 5' long. It shall be mounted in a conspicuous place, as approved by the Contract Administrator, accessible to all employees of the Contractor and subcontractors. The bulletin board will remain the property of the Contractor. On such board, the Contractor shall display all required University posters or notices, the contract Davis-Bacon wage rate decision, Contractor safety programs, and any publications of interest to workers.

#### **A14, Other Contracts**

The University or Government may undertake or award other contracts for additional work at or near the site of the construction work under this contract. The Contractor shall fully cooperate with the other contractors and with University or Government employees and carefully adapt scheduling and performance under this contract to accommodate the additional work, heeding any direction the Contract Administrator may provide. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by University or Government employees.

#### **A15, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements**

**(a)** The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the construction work site that are not to be removed and that do not unreasonably interfere with work required under this contract. The Contractor shall only remove trees when specifically authorized to do so and shall not damage vegetation that will remain in place. If any tree limbs or branches are broken during contract performance, or by workmen or careless operation of equipment, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contract Administrator.

**(b)** The Contractor shall protect from damage all existing improvements and utilities **(1)** at or near the construction work site, and **(2)** on property of third parties adjacent to the site, the locations of which are made known to or should be known by the Contractor. At no additional cost to the University, the Contractor shall repair any damage to such facilities, including those that are the property of third parties, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or

refuses to repair the damage promptly, the Contract Administrator may have the necessary work performed and charge the cost to the Contractor.

#### **A16, Subcontractors and Outside Associates and Consultants**

Any subcontractors, outside associates, or consultants required by the Contractor for any architect-engineer services under this contract will be limited to individuals or firms that, during negotiations, were specifically identified and agreed to in connection with such services. The Contractor shall obtain the Contract Administrator's written consent before making any substitution for such subcontractors, associates, or consultants.

#### **A17, Work on University or Government Premises—Insurance**

To the extent that the Contractor's work involves performance by the Contractor or its subcontractors at University- or Government-owned or leased sites or facilities, these provisions apply:

- (a)** At any time upon the request of the University, the Contractor shall submit a sworn statement setting forth the services performed or goods furnished by subcontractors and the amount due and to become due to each. If requested, the Contractor shall submit to the University before final payment a complete set of vouchers showing what payments have been made for goods and labor used in connection with the contract work.
- (b)(1)** The Contractor shall indemnify and hold harmless the University and the Government from and against all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Contractor or its subcontractors under the contract, except to the extent such claims, demands, causes of action, or suits arise out of (i) the preparation or approval by the University, the Government, or the agents or employees of the University or Government, of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (ii) the giving of or the failure to give directions or instructions by the University, the Government, or the agents or employees of the University or Government, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property;
- (2)** The Contractor shall also indemnify and hold harmless the University and the Government from all laborer's, materialmen's, and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government; and
- (3)** The Contractor shall promptly notify the University, in writing, of any claim, demands, causes of action, or suits brought to its attention. The Contractor shall forward with such notification copies of all pertinent papers received by the Contractor with respect to any such claims, demands, cause of action or suits, or liens. At the University's request, the Contractor shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or Government of all the Contractor's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means.
- (4)** *[This paragraph (b)(4) does not apply to architect-engineer services under the contract.]* Final payment shall not be made until the Contractor delivers to the University a complete release of all liens arising out of the contract or receipts in full in lieu thereof as the University may require, and if required in either case, an affidavit that so far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed. But the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the University all moneys the University may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.
- (c)** The Contractor shall not employ anyone unfit or unskilled in the assigned work and devote only the best qualified personnel to the contract work. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Contractor, the Contractor shall immediately remove the person from the work, and not reassign him, without written University permission, to work under the contract.
- (d)(1)** At its own expense the Contractor shall maintain with reputable companies insurance of types and amounts sufficient to protect the University and the Government from any and all public liability and Workers' Compensation claims at all times during contract performance. If requested, the Contractor shall supply the University with copies of certificates of insurance for required policies and obtain satisfactory evidence of subcontractors' compliance with these provisions before their participation in the work.
- (2)** The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or material change adversely affecting the interests of the Government or University shall not be effective for such

period as New Mexico law prescribes, or until 30 days after the insurer or the Contractor gives written notice to the Contract Administrator, whichever period is longer.

(3) The Contractor shall maintain the following types and minimum levels of insurance coverage:

(i) **General Liability**

Bodily Injury—comprehensive form, minimum \$500,000 per occurrence;

Injury Liability—\$200,000 per person;

(ii) **Workers' Compensation & Occupational Disease**—adequate to comply with applicable Federal and State law;

(iii) **Employer's Liability**—adequate to comply with applicable Federal and State law, but no less than \$100,000.

(iv) **Automotive**—When contract performance requires the use of an automobile, the Contractor shall maintain Automotive Liability, Comprehensive Form in the following minimum levels of coverage:

a) **Property damage**—\$100,000 per occurrence;

b) **Bodily Injury**—\$500,000 per occurrence;

c) **Other**—statutory requirements for the state in which the work is performed that is sufficient to meet normal and customary claims.

(v) **Aircraft**—If aircraft (other than regularly scheduled commercial passenger airlines) are used to perform the contract, the Contractor shall provide the following types and minimum levels of insurance coverage:

a) **Bodily injury**—\$200,000 per person and \$500,000 per occurrence, excluding passenger liability.

b) **Bodily injury, passenger liability**—\$200,000 multiplied by the number of seats or passengers, whichever is greater.

c) **Property damage**—\$200,000 per occurrence.

(4) The party performing the design effort shall maintain **Professional Liability** coverage in the following minimum amounts:

a) \$1,000,000 each occurrence.

b) \$2,000,000 project aggregate.

(5) **No Limitation**—By maintaining these levels of coverage, the Contractor's liability is not limited.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts that require work on University- or Government- owned or leased premises.

**A18, Inspection—Fixed-Price Design-Build**

(a) *Work* includes but is not limited to materials, workmanship, manufacture, fabrication, and installation of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the University.

(c) All work shall be conducted under the general oversight of the Contract Administrator and, unless otherwise designated by the specifications, is subject to University inspection and test at all places and at all reasonable times before acceptance.

(d) The Contractor shall furnish promptly, at no increase in contract price, all facilities, labor, and materials reasonably necessary for safe and convenient inspections and tests as may be required by the University. The University may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary.

(e) University inspections and tests are for the sole benefit of the University and Government and do not

(1) Relieve the Contractor of responsibility for providing adequate quality assurance measures;

(2) Relieve the Contractor of responsibility for damage to or loss of material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the University or Government after acceptance of the completed work under paragraph (m) of this clause.

(f) The University shall perform all inspections and tests in a manner that will not unnecessarily delay the work.

(g) Special, full size, and performance tests shall be performed as described in the contract.

(h) The Contractor is responsible for damage to property caused by defective workmanship.

(i) The Contractor shall, without charge, replace or correct work found by the University not to conform to contract requirements, unless in the public interest the University consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(j) If the Contractor does not promptly and in a workmanlike manner replace or correct rejected work, the University may—

(1) By contract or otherwise, replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Contractor; and

(2) Terminate for default the Contractor's right to proceed. The Contractor and any surety shall be liable, to the extent specified in the contract for any damage or cost of repair or replacement.

(k) The presence or absence of a University inspector does not relieve the Contractor from any contract requirement. No inspector is authorized to change any provision of the design or construction specifications without the Contract Administrator's written authorization. A designated Construction Inspector has the authority to inspect the construction work for quality and compliance with University Specifications and such other design or construction specifications, drawings, and criteria as the University and Contractor have agreed to; to check lines, grades and controls for the work; and to recommend changes to the Contract Administrator pursuant to the General Provision entitled *Changes*. No interpretation of this contract or direction shall be binding upon the University unless it is in writing and signed by the Contract Administrator.

(l) If, before acceptance of the entire work, the University decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contract Administrator shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(m) Unless the contract specifies otherwise, the University shall accept as promptly as practicable after completion and inspection all work required by the contract or that portion the Contract Administrator determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the University's rights under any warranty or guarantee.

#### **A19, Site Investigation and Conditions Affecting the Work**

(a) The Contractor acknowledges it has taken steps reasonably necessary to ascertain the nature and location of the onsite work, and has investigated and satisfied itself as to general and local conditions that can affect the work or its cost, including but not limited to (1) conditions bearing on transportation, disposal, handling, and storage of materials; (2) availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) conformation and conditions of the ground; and (5) character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the University, as well as from the contract drawings and specifications. Any failure to take the actions in this paragraph will not relieve the Contractor from properly estimating the difficulty and cost of the work or successfully performing the work without additional expense to the University.

(b) The University and Government assume no responsibility for any understanding or representation about conditions that can affect the work by any of their officers, employees, or agents before contract execution, unless that understanding or representation is expressly stated in this contract. Nor does the University or Government assume any responsibility for any conclusions or interpretations unreasonably drawn by the Contractor based on information made available by the University or Government.

#### **A20, Differing Site Conditions**

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contract Administrator of—

(1) Subsurface or latent physical conditions at the construction site that differ materially from those indicated in this contract; or

- (2) Unknown physical conditions at the site, of an unusual nature, that differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contract Administrator shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) for giving written notice may be extended by the Contract Administrator.
- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

#### **A21, Changes—Fixed-Price Design-Build**

- (a) The University may at any time—without notice to the sureties, if any—by written order indicated to be a change order, make changes within the general scope of the contract including changes—
  - (1) In the specifications, drawings, or designs;
  - (2) In the services or other work to be performed;
  - (3) In the method or manner of performance of the work;
  - (4) In the University-furnished Government facilities, equipment, materials, services, or site; or
  - (5) Directing acceleration in the performance of the work.
- (b) Any other written order—which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination—from the Contract Administrator that causes a change shall be treated as a change order under this clause provided the Contractor gives the Contract Administrator written notice stating—
  - (1) The date, circumstances, and source of the order; and
  - (2) That the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the work under this contract, whether or not changed by any such order, the Contract Administrator shall make an equitable adjustment and modify the contract in writing. However, except for adjustment based on defective specifications for which the University is responsible, no adjustment for any change under (b) shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. For defective specifications for which the University is responsible, equitable adjustment includes any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) If any change under this clause causes a material change in the amount or character of the work described in the Statement of Work or equivalent, the parties shall agree on an equitable adjustment of any fee payable under the contract, and the contract shall be modified in writing accordingly.
- (f) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under (a) or (2) the furnishing of a written notice under (b), by submitting to the Contract Administrator a written statement describing the general nature and amount of the proposal, unless this period is extended by the University. However, if the Contract Administrator decides the facts justify it, he may receive and act upon a proposal submitted before final contract payment. The statement of proposal for adjustment may be included in the notice under (b).
- (g) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contract Administrator has the right to prescribe the manner of disposition of the property.
- (h) No Contractor equitable-adjustment proposal is allowable if asserted after final contract payment.
- (i) Failure to agree to any adjustment shall be a dispute under the *Disputes/Arbitration* clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

#### **A22, Notification by Contractor of Changes**

- (a) **Notice.** The primary purpose of this clause is to obtain prompt reporting to the Contract Administrator of conduct that the Contractor considers to constitute a change to the contract or a task order issued pursuant to the contract. Except for changes identified as such in writing and signed by the Contract Administrator, Procurement Team

Leader, or Laboratory Procurement Manager, the Contractor shall notify the Contract Administrator in writing promptly within seven calendar days from the date that the Contractor identifies any University conduct (including actions, interactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each University individual and Contractor official or employee involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) For alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—
  - (i) What contract line items have been or may be affected by the alleged change;
  - (ii) What labor, materials, or both have been or may be added, deleted, or wasted by the alleged change;
  - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
  - (iv) What adjustments to contract or task order price, delivery schedule, and other provisions by the alleged change are estimated; and
- (6) The Contractor's estimate of the time by which the University must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

**(b) Continued performance.** Following submission of the notice required by paragraph (a) of this clause, the Contractor shall diligently continue performance of the contract or task order to the maximum extent possible in accordance with the terms and conditions as construed by the Contractor.

**(c) University response.** The Contract Administrator shall promptly, but no later than 10 calendar days after receipt of notice, respond to the notice in writing. In responding, the Contract Administrator shall—

- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
- (2) Countermand any communication regarded as a change; or
- (3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
- (4) In the event the Contractor's notice information is inadequate to make a decision under (c)(1), (2), or (3) above, the Contract Administrator will advise the Contractor what additional information is required and establish the date it should be furnished and the date when the University will respond.

**(d) Equitable adjustments.** (1) An equitable adjustment shall be made in the contract or task order price/fee or delivery schedule or both, and in such other provisions of the contract or task order as may be affected, and the contract shall be modified in writing accordingly, only—

- (i) If the Contract Administrator finds that **(A)** University conduct effected a change as alleged by the Contractor; and **(B)** such conduct caused an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the contract work, whether changed or not changed by such conduct; or
  - (ii) If the Contract Administrator finds that **(A)** drawings, designs, specifications, or other technical guidance furnished by the University were defective; **(B)** the Contractor reasonably relied on such defective technical guidance; and **(C)** such reliance caused an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the contract work, whether changed or not changed by such defective technical guidance.
- (2) In the case of defective drawings, designs, specifications, or other technical guidance furnished by the University, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective technical guidance before the Contractor identified, or reasonably should have identified, such defect.
  - (3) The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (a) and (b) of this clause.

(4) When the cost of property made obsolete or excess as a result of a change confirmed by the Contract Administrator under this clause is included in the equitable adjustment, the Contract Administrator shall have the right to prescribe the manner of disposition of the property.

#### **A23, Modification Proposals—Price Breakdown**

For any contract modification it proposes, the Contractor shall furnish an itemized price breakdown, which unless otherwise directed shall: (1) be in sufficient detail to permit analysis of all material, design effort, construction labor, equipment, contract and overhead costs, as well as profit; (2) cover all work involved in the modification, whether such work was deleted, added or changed; (3) similarly support any amount for subcontracts; (4) justify any proposed time extension; (5) include costs and time, if any, arising from the necessary, reasonable, and foreseeable effect the modification has on unchanged work; and (6) be furnished by such date as may be specified by the Contract Administrator.

#### **A24, Work Forces and Work Periods**

(a) The Contractor shall furnish sufficient forces, construction plant, and equipment, and shall work such hours, including night shifts, overtime operations, Sunday and holiday work as may be necessary, to insure the prosecution of the work in accordance with the approved progress schedule. Before commencing work, the Contractor shall furnish a program of shifts, hours, and days per week to be worked and the approximate number of persons per shift. The Contractor shall notify the Contract Administrator 48 hours in advance of any change to the program.

(b) If in the opinion of the Contract Administrator, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve its progress. The Contract Administrator may direct the Contractor to conduct overtime operations and to increase the number of employees or shifts or both, days of work, or the amount of construction plant, or all of them, and to submit for approval such supplementary schedules or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained.

(c) Failure of the Contractor to comply with requirements of this provision shall be grounds for the University to determine the Contractor is not prosecuting the work with the diligence to insure completion of the contract within the time specified. (See clause entitled *Default—Fixed-Price Design-Build*.)

#### **A25, Use and Possession Prior to Completion**

(a) The University has the right to take possession of or use any completed or partially completed part of the construction work. Before the University takes possession of or uses any such work, the Contractor shall submit to the University a *punch list* of items of work remaining to be performed or corrected on those portions of the work that the University intends to take possession of or use. The University will review the punch list and correct or add items as necessary. However, failure of the Contractor to list any item of work on the punch list—or failure of the University to correct or add any item of work to the list—shall not relieve the Contractor of responsibility for complying with the contract terms. The University's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the University has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the University's possession or use, notwithstanding the *Permits, Responsibilities, and Registration Requirements* or *Responsibility for Architect-Engineer Services* clauses. If prior possession or use by the University delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price/fee or the time of completion, or both, and the contract shall be modified in writing accordingly.

#### **A26, Cleaning Up**

At all times, the Contractor shall keep the work area, including storage areas, free from waste materials accumulations. At work completion, the Contractor shall (1) promptly remove all rubbish from and about the building, all Contractor tools, scaffolding, and surplus materials and (2) unless more exactly specified, leave the area *broom clean* or equivalent and otherwise clean, neat, and orderly. Failing such prompt removal and cleaning up, the University may perform such services and charge the cost to the Contractor.

## **A27, Warranty of Construction**

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in (i) and (k) of this clause, that its work conforms to the contract requirements and is free of any defect in equipment, material, design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If the University takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the University takes possession.
- (c) The Contractor shall remedy at its expense any defect or failure to conform. In addition, the Contractor shall remedy at its expense any damage to real or personal property owned or controlled by the Government or University, when that damage is the result of (1) The Contractor's failure to conform to contract requirements; or (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- (e) The University shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the University shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—
- (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed, in writing, for the benefit of the University if directed by the Contract Administrator; and
  - (3) Enforce all warranties for the benefit of the University, if directed by the Contract Administrator
- (h) When the Contractor's warranty under (b) of this clause expires, the University may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material, specifications, or design furnished by the University nor for the repair of any damage that results from any defect in University-furnished material, specifications, or design.
- (j) This warranty, during its one-year period, shall not be limited by other clauses of this contract, including the *Inspection—Fixed-Price Design-Build; Responsibility for Architect-Engineer Services; and Permits, Responsibilities, and Registration Requirement* clauses. Conversely, with respect to latent defects, gross mistakes, or fraud, this warranty shall not limit the University's rights generally at law or under this contract, including inspection and acceptance provisions.
- (k) Defects in design or manufacture of equipment specified by the University on a *brand name and model* basis shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the University.

## **A28, Operations Security Program**

If contract performance involves access to and protection of classified or sensitive information, nuclear materials or other safeguards and security interests, the Contractor shall implement and sustain a DOE Operations Security (OPSEC) Program in accordance with the *Laboratory's OPSEC Guidance for LANL Contractors Manual*.

## **A29, Security**

- (a) *Responsibility.* It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon



completion or termination of this contract, transmit to the University any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the University, the Contractor will complete a certificate of possession to be furnished to the University specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the University, the security provisions of the contract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the contract.

- (b) *Regulations.* The Contractor agrees to conform to all security regulations and requirements of DOE.
- (c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been detained to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) *Security clearance of personnel.* The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under the contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)
- (j) *Subcontracts and purchase orders.* Except as otherwise authorized in writing by the University, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under the contract.

### **A30, Security Procedures**

#### **(a) Badging**

All employees of the Contractor, employees of subcontractors, and/or consultants to the Contractor or subcontractors (hereinafter called Contract Personnel) performing work on-site at Los Alamos National Laboratory for ten or more consecutive work days must obtain a badge issued by the Laboratory Badge Office (S-6). Badges will Uncleared, L Cleared, or Q Cleared as appropriate for an individual's level of security clearance and the access needed to perform the requirements of the contract. If access is required for performance of the contract, approval of Foreign Ownership, Control, or Influence for the contract must have been received by the Laboratory prior to cleared badges being issued.

The Contractor shall make requests for badges to be issued to the University Technical Representative for submittal to S-6. Requests for issuance of Cleared badges must include the information listed in paragraph (c) below.

**(b) Security Access**

Access to security areas of the Laboratory or to classified information will require individuals to possess an L or Q Clearance and to have been issued a badge by the Laboratory Badge Office.

**(c) Clearances**

Requests for initiation or transfer of L or Q Clearances under the contract shall be made to the University Technical Representative for submittal to S-6 through the University Contract Administrator. Information listed below must be included in each request.

Full name

Date of Birth

Social Security Number

Job Title

Employer's name and address

Personnel officer or point of contact and telephone number for individual's employer.

Each of the following questions must be answered:

What service will the individual perform that necessitates possession of a clearance?

Does the individual require access to classified information/materials?

With whom will the individual interact within security areas?

Why the service cannot be performed outside of security areas or under escort.

Requests for transfer of a security clearance must include the following information:

Name of installation where the clearance was or is currently active.

DOE File Number (if available).

Date clearance was granted.

**(d) Escorted Entry to Security Areas**

Escorts for entry of uncleared personnel to security areas may be obtained from the Laboratory's contract labor subcontractor for secretarial and administrative support, whose name may be obtained from the University Contract Administrator. Payment for escort services obtained through this procedure shall be the responsibility of the Contractor.

**(e) Responsibilities of the Contractor**

All badges issued by the Laboratory Badge Office to Contract Personnel are the property of the U.S.

Government. The Contractor is responsible and accountable for all badges issued to Contract Personnel for performance of the contract.

If a badge is lost or stolen, the Contractor shall immediately notify the Laboratory Badge Office orally with a follow-up written notification.

The Contractor shall conduct or have conducted by its subcontractors, for each individual who has been issued a cleared badge, a Security Termination Briefing and shall obtain a Security Termination Statement, DOE Form 5631.29:

1. Upon termination of employment ,
2. When a clearance is no longer required to perform contract requirements, or
3. Upon completion of work called for under the contract.

The Contractor shall retrieve all badges, cleared and uncleared, including expired badges, issued for performance of the contract and return them to: Los Alamos National Laboratory, Personnel and Information Security Group, S-6, P.O. Box 1663, Mail Stop B236, Los Alamos, NM 87545 within 2 working days from:

1. The date of termination of employment of an individual classified as Contractor Personnel,
2. The date upon which it is determined that a clearance is no longer required for performance of contract requirements,
3. The date of removal/transfer of an individual from performing work under the contract, or
4. The date of completion or termination of work under the contract.

**(f) Withholding of Payment**

Final payment under the contract shall not be made by the University until all badges issued under the auspices of the contract have been either returned to S-6 or have been accounted for by the Contractor to the satisfaction of S-6.

**A31, Federal, State, and Local Taxes**

**(a) Definitions.** As used in this clause—

*Contract date* means the effective date of this contract or modification.

*All applicable federal, state, and local taxes and duties* means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract

*After-Imposed Federal Tax* means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

*After-Relieved Federal Tax* means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

**(b)** The contract price includes all applicable Federal, State, and local taxes and duties.

**(c)** The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

**(d)** The contract price shall be decreased by the amount of any after-relieved Federal tax.

**(e)** The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow University instructions.

**(f)** No contract price adjustment shall be made under this clause unless the adjustment exceeds \$250.

**(g)** The Contractor shall promptly notify the University of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate actions as the University directs.

**(h)** The University shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

**A32, Payments Under Fixed-Price Design-Build Contracts**

**(a)** The University shall pay the Contractor the total contract price as provided in this contract.

**(b)** As the work proceeds, progress payments shall be made in two tracks: one track for the architect-engineer portion of the contract work, and the other track for the construction portion of the work.

**(1) Architect-Engineer Work.** In accord with payment provisions elsewhere in the contract, the University shall make payments for the architect-engineer portion of the contract work as follows:

**(i) Milestone Estimates.** At the milestones (or monthly or such other intervals) for architect-engineer work set forth elsewhere in the contract, the Contractor shall make estimates of the amount and value of the architect-engineer work and services performed by the Contractor that the University approves as meeting the contract standards of quality. The Contractor shall submit such estimates, plus any supporting data required by the Contract Administrator, to the Contract Administrator for approval.

**(ii) Payments.** At the milestones (or such other intervals) set forth elsewhere in the contract for payments for architect-engineer work, the Contract Administrator shall—conditioned on properly executed vouchers and

approval by the Contract Administrator of the relevant, supporting estimates—make payments to the Contractor of 90 percent of the approved amount.

**(2) Construction Work.** In accord with payment provisions in the contract Schedule or the Special Provisions of this contract, and as the work proceeds, the University shall make progress payments monthly (or more frequently as determined by the University) for the construction portion of the work, based on estimates of construction work accomplished that the University approves as meeting the contract standards of quality.

**(i)** The Contractor's request for progress payments for construction work shall include the following substantiation:

**(A)** Itemize the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

**(B)** List the amount included for work performed by each subcontractor under the contract.

**(C)** List the total amount of each subcontract under the contract.

**(D)** List the amounts previously paid to each such subcontractor under the contract.

**(E)** Give additional supporting data in a form and detail required by the University.

**(ii)** In the preparation of estimates, the University may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if—

**(A)** Consideration is specifically authorized by this contract; and

**(B)** The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

**(iii)** Upon the Contract Administrator's approval of the estimate, payment upon properly executed vouchers shall be made as soon as practicable of 90 percent of the approved amount, less all previous payments.

**(c) Relaxation or Release of Retainage.** Except as limited by paragraph (d) of this clause, for progress payments under either track—

**(1)** The Contract Administrator in his sole discretion may make payment in full for any payment period for which he determines the existing reserve is adequate to protect the University and Government.

**(2)** When the Contract Administrator determines that the relevant work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the University and Government, he in his sole discretion may release the excess amount to the Contractor.

**(3)** On completion and final acceptance of each separate division of the contract for which the price is stated separately in the contract, payment in both tracks shall be made for the completed work without retention of a percentage.

**(d) Limitation because of Unfinalized Work.** Notwithstanding any other provision in this contract, and specifically paragraph (c) of this clause, progress payments under either track shall not exceed 80 percent on work accomplished on unfinalized contract actions. A *contract action* is any action resulting in a contract, as defined in FAR 2.1, including contract modifications for additional supplies or services—but not contract modifications within the scope of and under the terms of the contract, such as contract modifications issued pursuant to the *Changes* clause, or funding and other administrative changes.

**(e) Contractor Certification.** Along with each request for a progress payment, the Contractor shall furnish the following certification, or payment shall not be made:

*I hereby certify, to the best of my knowledge and belief, that—*

**(1)** The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

**(2)** Payments to subcontractors and suppliers have been made from previous contract payments; timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code; and

**(3)** This request for progress payments includes no amount that the Contractor intends to withhold or retain from a subcontractor or supplier under the terms and conditions of the subcontract.

*(Name) (Title) (Signature) (Date)*

**(f) Refund of unearned amounts.** If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the *unearned amount*), the Contractor shall—

- (1) Notify the University of such performance deficiency; and
- (2) Be obligated to pay the University an amount (computed by the University in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until—
  - (i) The date the Contractor notifies the University that the deficiency has been corrected; or
  - (ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

**(g) Title, liability, and reservation of rights.** All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or (2) waiving the right of the University to require fulfillment of all of the terms of the contract.

**(h) Reimbursement for bond premiums.** In making these progress payments, the University shall, upon request, reimburse the Contractor for premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in (c) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

**(i) Final payment.** As final contract payment or in settlement upon contract termination, the University shall pay the total balance of money due the Contractor under this contract, including retained percentages after, and as a condition precedent, (1) completion and acceptance of all work; (2) presentation of a properly executed voucher; (3) presentation of release by the Contractor of all claims against the Government and University arising under or by virtue of this contract, other than claims specifically excepted by the Contractor from operation of the release in amounts stated in the release; and (4) presentation of releases—executed by such of the Contractor's subcontractors, suppliers, and consultants as may be designated by the Contract Administrator—of all claims against the Government and University arising under or by virtue of this contract or their respective subcontract(s), other than claims that the respective subcontractor, supplier, or consultant has specifically excepted from operation of the release in amounts stated in the release. A release may also be required of the respective assignee(s) if the Contractor's claim—or a subcontractor's claim—to amounts payable under this contract or the respective subcontract has been assigned under the *Assignment of Claims Act of 1940* (31 U.S.C. §3727 and 41 U.S.C. §15).

**(j) Interest computation on unearned amounts.** The amount payable under (f)(2) shall be (1) computed at the rate of average bond equivalent rates of 91-day Treasury bills most recently auctioned prior to the date the Contractor receives the unearned amount; and (2) deducted from the next available payment to the Contractor.

### **A33, Subcontractor Cost or Pricing Data—Modifications**

**(a)** This clause applies only to a contract pricing adjustment expected to exceed \$500,000.

**(b)** Before issuing any subcontract award or pricing adjustment over \$500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

**(c)** The Contractor shall require the subcontractor to certify, using the form of certificate set forth in paragraph (d) below, that to the best of its knowledge and belief, the data submitted under (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

**(d)** The certificate required by this clause shall be in the form set forth below:

#### **CERTIFICATE OF CURRENT COST OR PRICING DATA**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in Section 15.401 if the Federal Acquisition Regulation [FAR] as required under FAR Subsection 15.403-4) submitted, either actually or by specific identification in writing, to the University in support of \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_.\*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the University or the Government that are part of the proposal.

Firm

Signature
Name
Title
Date of Execution***
<ul style="list-style-type: none"> <li>Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).</li> </ul>
<p>** Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.</p>
<p>*** Insert the day, month, and year of signing, which should be as close as practicable to the date when price negotiations were concluded and the subcontract price was agreed to.</p>

(e) The Contractor shall insert the substance of this clause, (a) through (d), in each subcontract over \$500,000.

#### **A34, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications**

##### **(a) Exceptions from cost or pricing data**

(1) In lieu of submitting cost or pricing data for contract modifications, for price adjustments expected to exceed \$500,000, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contract Administrator may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) **Identification of the law or regulation establishing the price offered.** If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, the Contractor shall attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) **Information on modifications of contracts or subcontracts for commercial items. (A) If—**

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the modification price. Such information may include—

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. The Contractor shall provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also, the Contractor shall explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, the Contractor shall describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contract Administrator or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

**(b) Requirements for cost or pricing data.** If the Contractor is not granted an exception from the requirement to submit cost or pricing data—

**(1)** The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

**(2)** As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

### **A35, Price Reduction for Defective Cost or Pricing Data—Modifications**

**(a)** This clause becomes operative only for a modification to the contract involving a pricing adjustment expected to exceed \$500,000, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

**(b)** If any price, including profit or fee, negotiated in connection with any modification under this clause or any cost reimbursable under the contract was increased by any significant amount because **(1)** the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its *Certificate of Current Cost or Pricing Data*; **(2)** a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's *Certificate of Current Cost or Pricing Data*; or **(3)** any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be so modified. This right to a price reduction is limited to that reduction resulting from defects in data relating to modifications for which this clause becomes operative under (a) above.

**(c)** Any reduction in the contract price under (b) because of defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which **(1)** the actual subcontract or **(2)** the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided that the actual subcontract price was not itself affected by defective cost or pricing data.

**(d)(1)** If the University determines under (b) above that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

**(i)** The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

**(ii)** The University should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contract Administrator.

**(iii)** The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.

**(iv)** The Contractor/subcontractor did not submit a *Certificate of Current Cost or Pricing Data*.

**(2)(i)** Except as prohibited by (d)(2)(ii), an offset in an amount determined appropriate by the University based on the facts shall be allowed against the amount of a contract price reduction if

**(A)** The Contractor certifies to the University that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

**(B)** The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

**(ii)** An offset shall not be allowed if **(A)** the understated data were known by the Contractor to be understated when the *Certificate of Current Cost or Pricing Data* was signed; or **(B)** the facts demonstrate to the University or Government that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

**(e)** If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the University at the time such overpayment is repaid simple interest on the amount of such overpayment computed from the date(s) of overpayment to the Contractor to the date of repayment by the Contractor at the underpayment rate effective for each quarter prescribed by the Secretary of The Treasury under 26 U.S.C. §6621(a)(2) and a penalty equal to the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

### **A36, Whistleblower Protection**

- (a) 10 CFR 708.** The Contractor shall comply with 10 CFR Part 708, *DOE Contractor Employee Protection Program*, for work performed on-site at LANL and any other facilities owned or leased by the University or DOE.
- (b)** The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b) in subcontracts, at all tiers, with respect to work performed on University or Government premises.

### **A37, Apprentices and Trainees**

- (a)** This clause does not apply to apprentices, trainees, engineers-in-training (EITs), architect interns, or other persons performing solely under the architect-engineer portion of the contract.
- (b)** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. If the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c)** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by ETA. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by ETA shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. If ETA withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (d)** Use of apprentices, trainees, and journeymen under this clause shall conform to the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.



### **A38, Certification of Eligibility**

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the *Davis-Bacon Act* or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be contracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the *Davis-Bacon Act* or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in 18 U.S.C. §1001, U.S. Criminal Code.

### **A39, Compliance with Regulations under the Copeland Act, Davis-Bacon Act, and Related Acts**

- (a) This clause does not apply to apprentices, trainees, engineers-in-training (EITs), architect interns, or other persons performing solely under the architect-engineer portion of the contract.
- (b) The Contractor shall comply with all regulations, rulings, and interpretations of the *Copeland Act* at 29 CFR Part 3 and of the *Davis-Bacon Act* and related Acts contained in 29 CFR Parts 1, 3, and 5.

### **A40, Davis-Bacon Act**

- (a) This clause does not apply to apprentices, trainees, engineers-in-training (EITs), architect interns, or other persons performing solely under the architect-engineer portion of the contract.
- (b) The Contractor shall pay all laborers and mechanics employed or working upon the worksite unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions permitted by regulations issued by the Secretary of Labor under the *Copeland Act* (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under §1(b)(2) of the *Davis-Bacon Act* on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed constructively made or incurred during such period. The Contractor shall pay such laborers and mechanics not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled *Apprentices and Trainees*. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein if the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination with any additional classifications and wage rates conformed under (b) of this clause and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the work site in an accessible place where it can be easily seen by the workers.
- (b)(1) Any class of laborers or mechanics not listed in the wage determination and to be employed under the contract shall be classified in conformance with the wage determination. The DOE Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
  - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
  - (ii) The classification is utilized in the area by the construction industry.
  - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate, including amounts designated for fringe benefits, where appropriate, the Contracting Officer will send a report of the action taken to the Administrator, *Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210*. Within 30 days of receipt, the Administrator or authorized representative will approve, modify, or disapprove every additional classification action and so advise the Contracting Officer or will notify the Contracting Officer that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. Within 30 days of receipt, the Administrator or an authorized representative will issue a determination and so advise the Contracting Officer or will notify the Contracting Officer that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided, that* the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the *Davis-Bacon Act* have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **A41, Disputes Concerning Labor Standards**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the *Disputes/Arbitration* clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **A42, Payrolls and Basic Records**

(a) This clause does not apply to apprentices, trainees, engineers-in-training (EITs), architect interns, or other persons performing solely under the architect-engineer portion of the contract.

(b) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the worksite. Such records shall contain the name, address, and social security number of each worker, his correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in §1(b)(2)(B) of the *Davis-Bacon Act*), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under (e) of the clause entitled *Davis-Bacon Act*, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in §1(b)(2)(B) of the *Davis-Bacon Act*, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(c)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the University. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under (b) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the *Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402*. The Contractor is responsible for submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a *Statement of Compliance*, signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (b) of this clause and that such information is correct and complete;
  - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
  - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement to submit the *Statement of Compliance* required by (a)(2).
- (4) Falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under §1001 of Title 18 and §3729 of Title 31, United States Code.
- (c) The Contractor or subcontractor shall make the records required under (b) available for inspection, copying, or transcription by the Contracting Officer, University, Department of Labor, or their authorized representatives and shall permit such persons to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the University or Contracting Officer may, after written notice to the Contractor, suspend further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment pursuant to 29 CFR 5.12.

#### **A43, Subcontracts—Labor Standards**

- (a) This clause does not apply to subcontracts relating solely to the architect-engineer portion of this contract.
- (b) The Contractor shall insert in any subcontract that involves over \$2,000 of construction—including any dismantling, demolition, or removal of improvements—the clauses entitled *Davis-Bacon Act*; *Contract Work Hours and Safety Standards Act—Overtime Compensation*; *Apprentices and Trainees*; *Payrolls and Basic Records*; *Compliance with Copeland Act Requirements*; *Withholding of Funds*; *Subcontracts—Labor Standards*; *Contract Termination—Debarment*; *Disputes Concerning Labor Standards*; *Compliance with Davis-Bacon and Related Act Regulations*; *Certification of Eligibility*; such other clauses as the University may by appropriate instructions require; and a clause requiring subcontractors to include these clauses in lower-tier subcontracts. Ensure compliance by any subcontractor with all the clauses cited above.
- (c)(1) Within 14 days after award of the subcontract, the Contractor shall deliver to the University a completed *Statement and Acknowledgment Form* (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in (b) have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract, the Contractor shall deliver to the Contract Administrator an updated completed SF 1413 for such additional subcontract.

#### **A44, Contract Work Hours and Safety Standards Act—Overtime Compensation**

- (a) This clause does not apply to persons whose services relate solely to the architect-engineer portion of this contract.
- (b) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work that may require or involve employment of laborers or mechanics (see FAR 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (c) **Violation; liability for unpaid wages; liquidated damages.** For any violation of provisions in (b), the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and such subcontractor shall be liable to the United States for liquidated damages, with respect to each individual laborer or mechanic employed in violation of the provisions in (b), in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by (b).
- (d) **Withholding for unpaid wages and liquidated damages.** The Contracting Officer shall upon his own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld,

from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in (c) of this clause.

**(e) Payrolls and basic records. (1)** The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the *Davis-Bacon Act*.

**(2)** The records to be maintained under (e)(1) shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the University, the Contracting Officer, or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

**(f) Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in (a) through (f) of this clause and also a clause requiring the subcontractors to include these provisions in any lower-tier contracts. The Contractor shall be responsible for compliance by any subcontractor at any tier with the provisions set forth in (a) through (f) of this clause.

#### **A45, Restrictions on Certain Foreign Purchases**

**(a)** Unless advance written approval of the University is obtained, the Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, and North Korea; **(b)** The Contractor shall not acquire for use in this contract any supplies or services from entities controlled by the Government of Iraq; **(c)** The Contractor shall insert this clause, including this sentence (c), in all subcontracts hereunder over \$2,500.

#### **A46, Buy American Act—Construction Materials**

**(a) Definitions.** As used in this clause—

*Components* means articles, materials, and supplies incorporated directly into construction materials.

*Construction material* means an article, material, or supply brought to the site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

*Domestic construction material* means **(1)** an unmanufactured construction material mined or produced in the United States, or **(2)** a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to FAR 25.202(a)(2) shall be treated as domestic.

**(b)(1)** As required by the *Buy American Act* (41 U.S.C. §§10a-10d), only domestic construction material shall be used by the Contractor, subcontractors, materialmen, and suppliers in contract performance, except for the excepted foreign construction material or components listed by the University as follows [*None, unless listed here—List applicable excepted materials*]

**(2)** Other foreign construction material may be added to the list in (b)(1) if the Government determines

**(i)** The cost would be unreasonable (*the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate*);

(ii) The application of the restriction of the *Buy American Act* to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

**(c) Request for determination**

(1) Contractors requesting to use foreign construction material under (b)(2) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the *Buy American Act*. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with (b)(2) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market, a completed price comparison table, and any other data required by the University. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If the Government determines after contract award that an exception to the *Buy American Act* applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in (b)(2)(i) of this clause.

(3) If the Government does not determine that an exception to the *Buy American Act* applies, the use of that particular foreign construction material will be a failure to comply with the Act.

**A47, Preference for Privately-Owned U.S.-Flag Commercial Vessels**

(a) The *Cargo Preference Act of 1954* (46 U.S.C. § 124(b)) requires Federal departments and agencies to transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation is required when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are (1) Acquired for a United States Government agency account; (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement; (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or (4) Acquired with advance of funds, loans, or guarantees made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions in (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-Flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated onboard ocean bill of lading for each shipment to both (i) the Contract Administrator and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street, SW, Washington, D.C. 20590. Subcontractor bills of lading shall be submitted through the Contractor to the Contract Administrator, who will forward all bills of lading to the DOE Contracting Officer. (2) The Contractor shall furnish these bills of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information: (A) Sponsoring U.S. Government agency; (B) Name of vessel; (C) Vessel flag of registry; (E) Port of loading; (G) Description of commodity; (H) Gross weight in pounds and cubic feet if available; and (I) Total ocean freight revenue in U.S. dollars.

(d) The requirement in (a) above does not apply to (1) Subcontracts at or below the simplified acquisition threshold as defined in the FAR; (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty; (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the *Foreign Assistance Act of 1961* (22 U.S.C. § 2353); or (4) Shipments of classified supplies when the classification prohibits use of non-Government vessels.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts or purchase orders under this contract.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-Flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, Phone: (202) 366-4610.

#### **A48, Preference for U.S.-Flag Air Carriers**

(a) **Definitions.** As used in this clause—

*International air transportation* means air transportation between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

*United States* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

*U.S.-flag air carrier* means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the *International Air Transportation Fair Competitive Practices Act of 1974* (49 U.S.C. § 40118) (*Fly American Act*) requires that all Federal agencies and Government contractors and University contractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows—

#### **Certification of Unavailability of U.S.-Flag Air Carriers**

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-Flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons:

[ *State Reasons—see FAR 47.403* ]

#### **A49, Affirmative Action Compliance Requirements for Construction**

(a) **Definitions.** As used in this clause—

*Covered area* means the geographical area described in the solicitation for this contract.

*DOL* means the United States Department of Labor.

*Director* means Director, Office of Federal Contract Compliance Programs (*OFCCP*), United States Department of Labor, or any person to whom the Director delegates authority.

*Employer's identification number* means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

*E.O. 11246* means Executive Order 11246, as amended.

*Minority* means—

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons with origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by DOL in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals), the Contractor shall comply with the plan for those trades that have unions participating in the plan. The Contractor must be able to demonstrate participation in, and compliance with, the provisions of the plan. The Contractor and each subcontractor participating in an approved plan is also required to comply with its obligations under the *Equal Opportunity* clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The failure of the Contractor or any subcontractor to make good-faith efforts to achieve the plan's goals is not excused by overall good-faith performance by subcontractors toward a goal in an approved plan.

(d) The Contractor shall implement the affirmative action procedures in (g)(1) through (16) below. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Obligations under this clause, E.O. 11246, and regulations thereunder shall not be excused by the terms and conditions of any collective bargaining agreement, nor failure by a union, with which the Contractor has a collective bargaining agreement, to refer minorities or women.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by DOL.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. Evaluation of compliance with this clause shall be based upon the Contractor's effort to achieve maximum results from actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by DOL. Provide notice of these programs to the sources compiled under (g)(2) above.

(6) Disseminate the Contractor's equal employment policy by—

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

- (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
- (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in (g)(1) through (16). Efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may fulfill one or more obligations under (g)(1) through (16), if the Contractor—
  - (1) Actively participates in the group;
  - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  - (3) Ensures concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
  - (4) Makes a good-faith effort to meet its individual goals and timetables; and
  - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- (i) The Contractor shall establish a single goal for minorities and a separate single goal for women. The Contractor shall provide equal employment opportunity and take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of E.O. 11246, if a particular group is employed in a substantially disparate manner.
- (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.



(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under E.O.11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under E.O.11246 and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and E.O.11246.

(m) In fulfilling obligations under this clause, the Contractor shall implement affirmative action procedures at least as extensive as those prescribed in (g) above, to achieve maximum results from efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of E.O.11246, the implementing regulations, or this clause, the Director shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

(1) Monitor all employment-related activity to ensure the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Maintain records in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall limit application of other laws that establish different standards of compliance or requirements for the hiring of local or other area residents (e.g., under the *Public Works Employment Act of 1977* and the *Community Development Block Grant Program*).

#### **A50, Affirmative Action for Workers with Disabilities**

##### **(a) General.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (*Secretary*) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (*the Act*), as amended.

##### **(b) Postings. (1) The Contractor agrees to post employment notices stating—**

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by

the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contract Administrator.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of §503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) **Noncompliance.** If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) **Subcontracts.** The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

#### **A51, Affirmative Action and Employment Reports for Disabled Veterans and Veterans of the Vietnam Era**

(a) **Definitions.** As used in this clause—

*All employment openings* includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment, and includes all positions except executive and top management, those positions to be filled from within the contractor's organization, and positions lasting 3 days or less.

*Appropriate office of the State employment service system* means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

*EEOC* means the Equal Employment Opportunity Commission.

*Positions that will be filled from within the Contractor's organization* means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established *recall* lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

*The Act* means the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended.

*Veteran of the Vietnam era* means a person who—

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) **General.** (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Act.

(c) **Listing openings.** (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the

locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. So long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) The foregoing listing requirements do not apply to employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

**(e) Postings.** (1) The Contractor agrees to post employment notices stating—

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contract Administrator.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

**(f)** Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

**(g)** The above items shall be reported by completing the form entitled *Federal Contractor Veterans' Employment Report VETS-100*.

**(h)** Reports shall be submitted no later than March 31 of each year.

**(i)** The employment activity report required by paragraph (f)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (f)(1) of this clause. Contractors may select as an ending date:

(1) The end of any pay period during January through March 1st of the year the report is due, or

(2) December 31, if the contractor has previous written approval from the EEOC to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

**(j)** The count of veterans reported according to paragraph (f) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. §4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. §4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. §4212.

**(k) Noncompliance.** If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

**(l) Subcontracts.** The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

## **A52, Equal Opportunity**

**(a)** If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

**(b)** During performance of this contract, the Contractor agrees as follows:

**(1)** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

**(2)** The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

**(i)** Employment;

**(ii)** Upgrading;

**(iii)** Demotion;

**(iv)** Transfer;

**(v)** Recruitment or recruitment advertising;

**(vi)** Layoff or termination;

**(vii)** Rates of pay or other forms of compensation; and

**(viii)** Selection for training, including apprenticeship.

**(3)** The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contract Administrator that explain this clause.

**(4)** The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

**(5)** The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contract Administrator advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

**(6)** The Contractor shall comply with Executive Order 11246 as amended (*E.O. 11246*) and the rules, regulations, and orders of the Secretary of Labor. However, it shall not be a violation of E.O. 11246 for a Contractor to extend a publicly announced preference to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. This applies to that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such preference shall not excuse complying with E.O. 11246, rules and regulations of the Secretary of Labor, and applicable clauses in this contract.

**(7)** The Contractor shall furnish to the University all information required by E.O. 11246 and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

**(8)** The Contractor shall permit access to its books, records, and accounts by the University, DOE, or the Office of Federal Contract Compliance Programs (*OFCCP*) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

**(9)** If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further University or Government contracts, under the procedures authorized in E.O. 11246. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in E.O. 11246, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of (b)(1) through (11) in every subcontract or purchase order not exempted by the rules, regulations, or orders of the Secretary of Labor issued under E.O. 11246, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

#### **A53, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns**

(a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term *small business concern* shall mean a small business as defined pursuant to §3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term *small business concern owned and controlled by socially and economically disadvantaged individuals* shall mean a small business concern (1) that is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and that meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to §8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) The term *small business concern owned and controlled by women* shall mean a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women; and

(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

#### **A54, Notice to the University of Labor Disputes**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contract Administrator.

## **A55, Environment, Safety, and Health, and ES&H Stop-Work**

**(a) Scope.** This clause applies only to onsite work, that is, services performed within the boundaries of Los Alamos National Laboratory (LANL), including transportation on roads—whether DOE, public, or quasi-public roads—within the gross, overall perimeter of DOE land assigned to LANL operations.

### **(b) General.**

(1) The Contractor shall comply with all applicable health, safety, fire protection, and environmental regulations and requirements (including notification and reporting requirements) of the federal government, DOE, the University, the State, and such other safety and health requirements as are specified in this contract. The Contractor shall bear the sole responsibility for *ES&H* compliance in connection with its work under the contract. Any failure of the Contractor, its employees, its subcontractors, or their employees to comply with such ES&H requirements that results in a serious injury or fatality or reflects a persistent disregard for health and safety shall be cause for the University at its sole discretion, to require corrective action, to suspend work under this contract until corrective action has been completed, or to terminate this contract for default. The General Provision entitled *Default* shall apply to any termination pursuant to this clause. A termination pursuant to this clause shall be considered in determining whether the Contractor or any subcontractor whose acts or omissions were the basis for the termination is a responsible bidder for any subsequent contract with the University.

(2) In this clause, *safety* encompasses environment, safety, and health—including pollution prevention and waste minimization; *employees* includes subcontractor employees; and *line management* includes those Contractor and subcontractor employees managing or supervising employees performing work.

### **(c) Contractor's Responsibility for Environment, Safety, and Health (ES&H).**

(1) The Contractor shall ensure that—

- (i) Management of ES&H functions is an integral, visible part of work planning and execution;
- (ii) Line management is responsible for the protection of employees, the public, and the environment;
- (iii) Personnel have the experience, knowledge, skills, and abilities necessary to discharge their responsibilities;
- (iv) Resources are effectively allocated to address ES&H programmatic and operational considerations.

(2) The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. To mitigate hazards and prevent accidents and unplanned releases and exposures, the Contractor shall tailor administrative and engineering controls to the work and associated hazards.

(3) Before a work activity is performed, the Contractor shall evaluate the associated hazards and establish an agreed-upon set of ES&H standards and requirements that, if properly implemented, provide adequate assurances that the employees, the public, and the environment are protected.

(4) The Contractor shall take all reasonable precautions in the performance of the work under the contract so as to provide and maintain work environments and procedures that will—

- (i) Minimize danger from all hazards to persons, property and the environment;
- (ii) Prevent accidents of any kind whenever work is being performed under the contract and generally safeguard the safety and health of all persons, including employees, University and Government personnel, and the public; property; materials; supplies; and equipment exposed to Contractor operations and activities;
- (iii) Avoid interruptions of Government operations and delays in project completion dates; and
- (iv) Control costs in the performance of this contract.

(5) Such measures or precautions noted in (4) above shall include but not be limited to providing appropriate safety barricades, signs, signal lights; and posting of warnings.

(6) The Contractor shall take any additional measures the Contract Administrator determines to be necessary.

### **(d) Corrective Action**

(1) The Contractor shall promptly evaluate and resolve any noncompliance with the Contractor's Safety Program or other ES&H requirements.

(2) Whenever the Contract Administrator becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Contractor, University, or Government personnel, the Contract Administrator shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action.

### **(e) Stop Work Orders**

**(1) Failure to Take Corrective Action.** If the Contractor fails or refuses to promptly take corrective action as noted above, the Contract Administrator may issue an order stopping all or part of the work until satisfactory corrective action has been taken.

**(2) LIR 401-10-01.0.** Without prejudice to any other *Stop Work* rights contained in this contract, any DOE, University, or contract employee may stop work under the contract in accordance with the provisions of Laboratory Implementation Requirement 401-10-01.0, *Stop Work and Restart*.

**(3) No Prejudice.** Any stop work order issued under this clause shall be without prejudice to any other legal or contractual rights of the Government or the University.

**(4) No Equitable Adjustment.** If the University issues a stop-work order or otherwise suspends work pursuant to this clause, the Contractor shall not be entitled to an extension of time, increase in contract price (or fee), compensation, damages with respect to, or resulting from, or any other positive, equitable adjustment for, any suspension or stop work order reasonably issued under this clause.

**(f)** The Contractor is responsible for ensuring compliance with the ES&H requirements applicable to the onsite work under this contract, regardless of the performer of any particular work task. However, this paragraph is not intended to attribute any liability to the Contractor in the absence of a specific finding of fault on the part of the Contractor.

**(g)** The Contractor shall insert this clause, including this paragraph (g), with appropriate changes in the designation of the parties, in subcontracts that require onsite work.

#### **A56, Pollution Prevention and Right-to-Know Information**

**(a)** Executive Order 12856, August 3, 1993, (*E.O. 12856*) requires federal facilities such as LANL to comply with the *Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)* (42 U.S.C. §§11001-11050) and the *Pollution Prevention Act of 1990 (PPA)* (42 U.S.C. §§13101-13109).

**(b)** The Contractor shall provide the University with all information (associated with the Contractor's contract performance) needed by LANL to comply with emergency planning reporting requirements of EPCRA §302; emergency notice requirements of EPCRA §304; list of Material Safety Data Sheets required by EPCRA §311; emergency and hazardous chemical inventory forms of EPCRA §312; toxic chemical release inventory of EPCRA §313, which includes the reduction and recycling information required by PPA §6607; and toxic chemical reduction goals requirements of §3-302 of E.O. 12856.

#### **A57, Clean Air and Water**

As used in this clause—

*Air Act* means the Clean Air Act (42 U.S.C. §§7401 et seq.).

*Clean air standards* means—

**(1)** Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

**(2)** An applicable implementation plan as described in §110(d) of the Air Act (42 U.S.C. 7410(d));

**(3)** An approved implementation procedure or plan under §111(c) or §111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

**(4)** An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

*Clean water standards* means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by §402 of the Water Act (33 U.S.C. §1342), or by local government to ensure compliance with pretreatment regulations as required by §307 of the Water Act (33 U.S.C. §1317).

*Compliance* means compliance with—

**(1)** Clean air or water standards; or

**(2)** A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

*Facility* means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure,

the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

*Water Act* means Clean Water Act (33 U.S.C. §§1251 et seq.).

**(b) The Contractor shall—**

**(1)** Comply with the requirements of §114 of the Clean Air Act (42 U.S.C. §7414) and §308 of the Clean Water Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in §114 and §308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

**(2)** Ensure that no portion of the work required by this contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

**(3)** Use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

**(4)** Insert the substance of this clause in any nonexempt subcontract, including this subparagraph (b)(4).

**A58, Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for FY93**

**(a)** Consistent with the objectives of §3161 of the *National Defense Authorization Act for Fiscal Year 1993*, 42 U.S.C. §7274h, in instances where DOE has determined that a change in workforce at a DOE Defense Nuclear Facility is necessary, the Contractor agrees to **(1)** comply with the DOE Workforce Restructuring Plan for the facility, if applicable, and **(2)** use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

**(b) Displaced Employee Hiring Preference**

**(1)** *Eligible employee* means a current or former employee of a Contractor or subcontractor at any tier employed at a DOE Defense Nuclear Facility—

**(i)** whose position of employment has been or will be involuntarily terminated (except if terminated for cause),

**(ii)** who has also met the eligibility criteria contained in the DOE guidance for contractor workforce restructuring, as may be amended from time to time, and

**(iii)** who is qualified for a particular job vacancy with the Contractor with respect to work under this contract at the time the particular position is available.

**(2)** Consistent with DOE guidance for contractor workforce restructuring, as may be amended from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

**(c)** The requirements of this clause shall be included in all subcontracts at any tier (except for contracts for commercial items pursuant to 41 U.S.C. §403) expected to exceed \$500,000.

**A59, Drawings and Other Data to Become Property of Government**

All designs, drawings, specifications, notes, and other informational work developed in performance of this contract shall be and remain the sole property of the Government. Without additional compensation to the Contractor, the University and Government may duplicate, disclose, and use on any other work, or in any manner or for any purpose such informational work delivered under this contract. With respect thereto, the Contractor shall not assert any rights or establish any claim under the copyright or design patent laws. For three years after project completion, the Contractor shall furnish and provide access, on request of the University or Government, to all retained materials on the project. Unless this contract provides otherwise, the Contractor has the right to retain copies of all such materials beyond such period.

**A60, Rights in Data—General**

**(a) Definitions.** As used in this clause—

*Computer software* means computer programs, computer data bases, and documentation thereof.

*Data* means recorded information, regardless of form or recording media. The term includes technical data and computer software but does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.



*Form, fit, and function data* means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

*Limited rights* means the rights of the Government in limited rights data as set forth in (g)(2) of this clause. *[(g)(2) will be present in this clause only when the contract Schedule incorporates it by specific citing of the clause entitled Rights in Data—Limited Rights Notice.]*

*Limited rights data* means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

*Restricted computer software* means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

*Restricted rights* means the rights of the Government in restricted computer software, as set forth in (g)(3) of this clause *[(g)(3) will be present in this clause only when the contract Schedule incorporates it by specific citing of the clause entitled Rights in Data—Restricted Rights Notice]*, or as otherwise may be provided in a collateral agreement incorporated in and made a part of the contract, including minor modifications of such computer software.

*Technical data* means data (other than computer software) of a scientific or technical nature.

*Unlimited rights* means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

**(b) Allocation of rights**

**(1)** Except as provided in (c) of this clause regarding copyright, the Government shall have unlimited rights in—

- (i)** Data first produced in the performance of the contract;
- (ii)** Form, fit, and function data delivered under the contract;
- (iii)** Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under the contract; and
- (iv)** All other data delivered under the contract unless provided otherwise for limited rights data or restricted computer software in accordance with (g) of this clause.

**(2)** The Contractor shall have the right to—

- (i)** Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of the contract unless provided otherwise in (d) of this clause;
- (ii)** Protect from unauthorized disclosure and use those data, which are limited, rights data or restricted computer software to the extent provided in (g) of this clause;
- (iii)** Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with (e) and (f) of this clause; and
- (iv)** Establish claim to copyright subsisting in data first produced in the performance of the contract to the extent provided in (c)(1) of this clause.

**(c) Copyright**

**(1) Data first produced in the performance of the contract.** Unless provided otherwise in (d) of this clause, the Contractor may establish, without prior approval of the University, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of the contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the DOE Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of the contract. (Requests for DOE Contracting Officer's permission are to be submitted through the University Contract Administrator.) When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. §§401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the University, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For

computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, or perform publicly or display publicly by or on behalf of the Government.

**(2) Data not first produced in the performance of the contract.** The Contractor shall not, without prior written permission of the DOE Contracting Officer, incorporate in data delivered under the contract any data not first produced in the performance of the contract and which contains the copyright notice of 17 U.S.C. §§401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in (c)(1) of this clause; *provided, however*, that if such data are computer software the Government shall acquire a copyright license as set forth in (g)(3) of this clause if included in the contract or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

**(3) Removal of copyright notices.** The University and Government agree not to remove copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

**(d) Release, publication and use of data.**

**(1)** The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of the contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this clause or expressly set forth in the contract.

**(2)** The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of the contract which contains restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the University after conferring with the DOE Contracting Officer.

**(3)** The Contractor agrees not to establish claim to copyright in computer software first produced in the performance of the contract without prior written permission of the DOE Contracting Officer. (Requests for DOE Contracting Officer's permission shall be submitted through the Contract Administrator.) When such permission is granted, the DOE Contracting Officer through the University shall specify appropriate terms to assure dissemination of the software. The Contractor shall promptly deliver to the University or to the Patent Counsel designated by the DOE Contracting Officer a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the computer software to which claim to copyright is made.

**(e) Unauthorized marking of data**

**(1)** Notwithstanding any other contract provisions concerning inspection or acceptance, if any data delivered under the contract are marked with the notices specified in (g)(2) or (g)(3) of this clause, and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by the contract, the University may at any time either return the data to the Contractor, or with the concurrence of the DOE Contracting Officer, cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

**(i)** The University shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

**(ii)** If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the University for good cause shown), the University shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

**(iii)** If the Contractor provides written justification to substantiate the propriety of the markings within the period set in (e)(1)(i) of this clause, the University shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the University determines that the markings are authorized, the Contractor shall be so notified in writing. If the University determines, with the concurrence of the DOE Contracting Officer, that the markings are not authorized, the University shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the University's decision. The University shall continue to abide by the markings under this section (e)(1)(iii) until final resolution of the matter either by the University's determination becoming final (in which instance the University shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosures), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedure set forth in (e)(1) of this clause may be modified in accordance with DOE regulations implementing the *Freedom of Information Act* (5 U.S.C. §552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the *Federal Property and Administrative Services Act of 1949*.

(4) Except to the extent the University's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the clause entitled *Disputes/Arbitration*, that may arise as the result of the University's removing or ignoring authorized markings on data delivered under the contract.

**(f) Omitted or incorrect markings.**

(1) Data delivered to the University without either the limited rights or restricted rights notice as authorized by (g) of this clause, or the copyright notice required by (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the University and the Government assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the University or the Government, the Contractor may request, within 6 months (or a longer time approved by the University for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the University may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the University and the Government have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The University may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

**(g) Protection of limited rights data and restricted computer software.**

(1) When data other than that listed in (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under the contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the University under the contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the University are to be treated as limited rights data and not restricted computer software.

(2) *Reserved.*

**(h) Subcontracting.** The Contractor shall obtain from subcontractors all data and data rights necessary to fulfill the Contractor's obligations to the University and Government under the contract. If a subcontractor refuses to accept terms affording such rights, the Contractor shall promptly bring such refusal to the University's attention and not proceed with subcontract award without further authorization.

**(i) Relationship to patents.** Nothing contained in this clause shall imply a license to the University or Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the University or the Government.

**(j)** Except as may be otherwise specified in the contract for specific data items listed as not subject to this paragraph, the University and the Government may, up to three years after acceptance of all items to be delivered under the contract, inspect at the Contractor's facility any data withheld pursuant to (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the DOE Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the DOE Contracting Officer shall designate an alternate inspector.

**A61, Additional Data Requirements**

**(a)** In addition to data defined in the *Rights in Data—General* clause (or equivalent clause) and specified elsewhere in the contract to be delivered, the University may, at any time during contract performance or within three years

after acceptance of all items to be delivered under the contract, order any data first produced or specifically used in performance of the contract.

(b) The *Rights in Data—General* clause or other equivalent clause in the contract is applicable to all data ordered under this *Additional Data Requirements* clause. Nothing in this clause requires the Contractor to delivery any data the withholding of which is authorized by the *Rights in Data—General* (or other equivalent clause) or data that are specifically identified in the contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form for reproduction and for delivery.

(d) At any time during the three-year period, the University with concurrence of the DOE Contracting Officer may release the Contractor from the requirements in (a) for specifically identified data items.

#### **A62, Notice and Assistance Regarding Patent and Copyright Infringement**

(a) The Contractor shall report to the Government, through the University, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement, based upon the performance of the contract, of which the Contractor has knowledge.

(b) In the event of any claim or suit against the University or the Government on account of any alleged patent or copyright infringement arising out of the performance of the contract or out of the use of any goods furnished or work or services performed under the contract, the Contractor shall furnish to the University, when requested by the University, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include, and require inclusion of, this clause in all subcontracts at any tier for goods or services (including construction and architect-engineer contracts and those for goods, models, samples, or design or testing services) expected to exceed \$100,000.

#### **A63, Patent Indemnity with Exclusion of Items—Design-Build Contracts**

(a) Except as otherwise provided, the Contractor agrees to indemnify the University, Government, and their officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. §181) arising out of performing this contract or out of the use or disposal by or for the account of the University or Government of supplies furnished or work performed under this contract.

(b) This patent indemnification shall not apply to the following items: [*None, unless listed below*]

#### **A64, State Lien Statutes**

State lien statutes are not applicable to construction contracts for federal facilities. Therefore, Preliminary Notices (for such liens) to the University will not be acknowledged. The Miller Act (40 USC 270a-270d) may provide a remedy for unpaid persons or firms furnishing labor and/or materials in the prosecution of the work provided under this Contract.

#### **A65, Notification of Ownership Changes**

The Contractor shall—

(a) Notify the Contract Administrator in writing within 30 days when (1) the Contractor becomes aware a change in its ownership has occurred or is certain to occur that could result in changes in valuation of its capitalized assets in accounting records; (2) Changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) Maintain current, accurate, and complete inventory records of assets and their costs;

(c) Provide the DOE Administrative Contracting Officer, or designated representative, or the University Contract Administrator ready access to the records upon request;

(d) Ensure all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(e) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(f) Include the substance of this clause, (a) through (f), in all subcontracts to which FAR 15.408(k) applies.

#### **A66, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions**

The Contractor shall promptly notify the Contract Administrator in writing when the Contractor determines it will reduce or terminate a Postretirement Benefits (PRB) plan. If PRB fund assets revert or inure to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall refund or credit to the University (or Government, as directed) its equitable share as required by FAR 31.205-6(o)(6). Include this clause in all subcontracts to which FAR 15.408(j) applies.

#### **A67, Termination of Defined Benefit Pension Plans**

The Contractor shall promptly notify the Contract Administrator in writing when the Contractor determines it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If such assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the University for the equitable share required by FAR 31.205-6(j)(4). The Contractor shall include the substance of this clause in all subcontracts to which FAR 15.408(g) applies.

#### **A68, Price or Fee Adjustment for Illegal or Improper Activity**

(a) The University at its election may reduce the price of a firm fixed-price type contract and the total fee under a fixed-price with incentive-fee contract by the amount of profit or fee determined as set forth in (b) of this clause if the head of the DOE contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the *Office of Federal Procurement Policy Act*, as amended (41 U.S.C. §423), as implemented in FAR 3.104.

(b) The price or fee reduction referred to in (a) of this clause shall be as follows:

(1) For fixed-price-incentive contracts, the University may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the University may defer such adjustment until the total final price of the contract is established. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at award and such reduced price shall be the total final contract price.

(2) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the University from records or documents in existence prior to the date contract award.

(c) The University may at its election reduce the Contractor's price or fee in accord with (b) of this clause for violations of the Act by the Contractor's subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in (a) and (c) of this clause, the University may terminate this contract for default. The rights and remedies of the University specified herein are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### **A69, Restrictions on Subcontractor Sales to the Government or University**

(a) Except as provided in (b), the Contractor shall not enter into any agreement with actual or prospective subcontractors nor otherwise act in any way that restricts or may restrict sales by such subcontractors directly to the Government or University of any item or process (including computer software) made or furnished by the subcontractor under this contract or any follow-on production contract.

(b) The prohibition in (a) does not preclude the Contractor from asserting rights otherwise authorized by law or regulation. For subcontracts for commercial items, the prohibition in (a) applies only to the extent any agreement restricting sales by subcontractors results in the Government or University being treated differently from any other prospective purchaser of the commercial item(s).

(c) The Contractor shall incorporate the substance of this clause, including this paragraph, in all subcontracts over \$100,000.

#### **A70, Anti-kickback Procedures**

**(a) Definitions.** As used in this clause—

*Kickback* means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, contractor, or contractor employee in order to improperly obtain or reward favorable treatment in connection with a prime contract or in connection with a contract relating to a prime contract.

*Person* means a corporation, partnership, business association of any kind, trust, joint stock company, or individual.

*Prime contract* means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

*Prime Contractor* means a person who has entered into a prime contract with the United States.

*Prime Contractor employee* means any officer, partner, employee, or agent of a prime Contractor.

*Subcontract* means a contract or contractual action entered into by a prime Contractor or contractor for supplies, materials, equipment, or services of any kind under a prime contract.

*Contractor* **(1)** means any person, other than the prime Contractor, who furnishes or offers to furnish any supplies, materials, equipment, or services of any kind under a prime contract or a contract entered into in connection with such prime contract, and **(2)** includes any person who furnishes or offers to furnish general supplies to the prime Contractor or a higher-tier contractor.

*Contractor employee* means any officer, partner, employee, or agent of a contractor.

**(b)** The *Anti-Kickback Act of 1986* (41 U.S.C. §§51-58) (the *Act*), prohibits any person from **(1)** Providing or attempting to provide or offering to provide any kickback; **(2)** Soliciting, accepting, or attempting to accept any kickback; or **(3)** Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a contractor to a prime Contractor or higher-tier contractor.

**(c)(1)** When the Contractor has reasonable grounds to believe a violation described in (b) above may have occurred, the Contractor shall promptly report in writing the possible violation. The Contractor shall make such reports to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice. **(2)** The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in (b) above. **(3)** The Contracting Officer may **(i)** offset the amount of the kickback against any monies owed by the United States under the prime contract and/or **(ii)** direct that the Prime Contractor withhold from sums owed a contractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under (c)(3)(ii) be paid over to the Government unless the Government has already offset those monies under (c)(3)(i). In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

**(d)** The Contractor shall incorporate the substance of this clause, including (d), in all subcontracts over \$100,000.

#### **A71, Bankruptcy**

If the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contract Administrator. This notification shall be furnished within five days of initiation of the proceedings relating to bankruptcy filing and shall include the date of filing of the bankruptcy petition, identity of the court in which the petition was filed, and a listing of Government (and University) contract numbers and contracting offices for all Government (and University) contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

#### **A72, Disputes/Arbitration**

**(a) Definitions.** For the purposes of this clause:

**(1)** *Arbitration decision* means a decision of the Board in an arbitration pursuant to this clause.

(2) **Board** means the Department of Energy Board of Contract Appeals established by the Secretary of Energy pursuant to §g(a)(1) of the *Contract Disputes Act of 1978*, 41 U.S.C. §607(a)(1).

(3) **Claim** means a demand or assertion by either contracting party seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of a contract term, or any other relief arising under, or relating to, this contract.

(4) **Counterclaim** means a claim asserted in a pleading filed with the Board in an arbitration pursuant to this clause, which claim arises from the same occurrence or transaction related to this contract that is the subject matter of the opposing party's claim. A counterclaim is not required to be submitted to the Laboratory Procurement Manager.

(5) **Rules of the Board** means the Board's rules promulgated at 10 C.F.R. Part 1023, Subpart A.

(b) **Nature of contract.** This is not a Government contract and is not subject to the *Contract Disputes Act of 1978* (41 U.S.C. §§601-613). DOE is not a party to this contract and is not directly liable to the Contractor for claims and disputes under this article. Further, for the purposes of this contract, the University is not an agent of DOE, and neither the presence of this clause in the contract nor provision for arbitration by the Board shall create or imply privity of contract between the Contractor and DOE.

(c) **Scope of Clause.** The rights and procedures set forth in this clause are the exclusive rights and procedures for resolution of all claims and disputes arising under, or relating to, this contract. The parties shall be bound by an arbitration decision, which shall be enforceable as provided in the *Federal Arbitration Act* (9 U.S.C. §§1 et seq.) and the terms of this clause.

(d) **Submission of Claim; Laboratory Procurement Manager's Decision.**

(1) Unless otherwise provided in this contract, the Contractor must file any claim against the University within 30 calendar days after the Contractor knew or should have known the facts giving rise to the claim.

(2) The Contractor must submit any claim in writing first to the Contract Administrator, who shall attempt to resolve the matter within a reasonable amount of time. If the Contract Administrator does not resolve the claim satisfactorily to the Contractor, and the Contractor desires to pursue further action, the Contractor must submit the claim in writing to the Laboratory Procurement Manager.

(3) Within 60 days after receipt of the claim, the Laboratory Procurement Manager must issue a written decision or notify the Contractor of the time within which a decision will be issued, which time shall be reasonable, taking into account such factors as the size and complexity of the claim and the adequacy of the information provided by the Contractor in support of the claim. If the Laboratory Procurement Manager fails to issue a written decision within the specified period, the Contractor may demand arbitration by the Board as if the claim had been denied.

(4) The Contract Administrator may also submit a claim against the Contractor in writing to the Laboratory Procurement Manager, who shall issue a written decision.

(5) The decision of the Laboratory Procurement Manager shall be final and conclusive unless the complaining party demands arbitration by the Board in accordance with the terms of this clause.

(e) **Demand for Arbitration.** If the decision of the Laboratory Procurement Manager is not satisfactory to a complaining party, and the complaining party desires to pursue further action, the complaining party must, within 45 days after receipt of the Laboratory Procurement Manager's decision, submit to the Board a written demand for arbitration of the claim. The Board shall arbitrate the claim and any counterclaims in accordance with the Rules of the Board.

(f) **Right to Hearing; Costs.** In any arbitration pursuant to this clause, both parties shall be afforded an opportunity to be heard and present evidence in accordance with the Rules of the Board. Unless the Board orders otherwise, each party shall pay its own costs of prosecuting or defending an arbitration before the Board.

(g) **Arbitration Decision.** An arbitration decision shall be final and conclusive unless a party within 120 days after receipt of the decision, files an action to vacate, modify or correct the decision pursuant to the *Federal Arbitration Act*.

(h) **Contractor Performance Pending Claim Resolution.** The Contractor shall proceed diligently with performance of this contract and shall comply with any decision of the Contract Administrator or Laboratory Procurement Manager, pending final resolution of any claim or dispute arising under, or relating to, this contract.

(i) **No Other Court Action.** No action based upon any claim or dispute arising under, or relating to, this contract shall be brought in any court except as provided in this clause.

(j) **Choice of Law.** This contract shall be governed by Federal law as provided for in this subparagraph. Irrespective of the place of award, execution of performance, this contract shall be construed and interpreted, and its validity determined, according to the Federal common law of government contracts as enunciated and applied to prime

government contracts by the Board and Federal courts having appellate jurisdiction over the decisions of the Board rendered pursuant to the *Contract Disputes Act of 1978*. The Federal Arbitration Act and other Federal statutes (including the *Contract Disputes Act of 1978*), Federal rules (including the FAR, the DEAR, and the Rules of the Board) shall apply in accordance with their respective provisions.

**(k) Interest.** Interest on amounts adjudicated due and unpaid by a party shall be paid from the date the complaining party files a demand for arbitration with the Board. Interest on claims shall be paid at the rate established by the Secretary of the Treasury of the United States pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board.

### **A73, Default—Fixed-Price Design-Build—National Emergency or Normal Conditions**

**(a) Delay.** Within 10 days (unless extended by the University) from the beginning of any delay, the Contractor shall deliver to the Contract Administrator a written notice of delay, explaining the causes of delay. The Contract Administrator will ascertain the facts and extent of delay and—if in his judgment the facts warrant such action—extend the time for completing the work. The findings of fact and decision of the Contract Administrator shall be final and conclusive, subject to appeal under the *Disputes/Arbitration* clause.

**(b)(1) Notice of Default.** If the Contractor fails to (i) perform the work under the contract or any separable part within the time specified in the contract or any extension; (ii) prosecute the work or any separable part with the diligence that will insure its completion within the time specified in the contract or any extension, or (iii) timely perform any of the other provisions of the contract, the University may, by written Notice of Default to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed.

**(2)** In such event, the University may, as to—

(i) Terminated architect-engineer services—acquire, under the terms and in the manner the University considers appropriate, work similar to the work terminated. (*The Contractor shall be liable to the University for any excess costs for the similar work but shall continue any work not terminated.*)

(ii) Terminated work other than architect-engineer services—take over the work and complete it by contract, or otherwise, and may take possession of and use any materials, appliances, and plant on the construction work site necessary for completing such work.

**(3) Opportunity to Cure.** If the Contractor cures the default or separable portions within 10 days (or longer if authorized in writing by the University) after receipt of the Notice of Default, the University will retract the notice in full or in part and not terminate the right to proceed with such work.

**(4) Property.** If the contract is terminated for default, the University may require the Contractor to transfer title to the Government and deliver to the University any (i) completed or partially completed work not previously delivered and accepted and (ii) other property, including contract rights, specifically produced or acquired for the terminated portion of the contract. Upon direction of the University, the Contractor shall also protect and preserve property in its possession in which the Government or University has an interest.

**(5) Termination and Liability.** The right to proceed shall be terminated, and the Contractor and its sureties shall be liable for excess costs and other damages under this clause, if the failure to perform the contract within the specified time arises from inexcusable causes (see below), or the Contractor fails to give timely notice of the delay as required in (a) above. The right to proceed shall not be terminated nor the Contractor charged with excess costs or other damages under this clause, if (1) the Contractor gives timely notice of the delay as required in (a) above; and (2) the failure to perform the contract within the specified time arises from excusable causes (see below)..

**(c) Inexcusable Causes.** The default of the Contractor is inexcusable if the failure to perform is caused (1) directly by the default of a subcontractor at any tier, but the subcontracted goods or services were obtainable from other sources in sufficient time for the Contractor to meet the required schedule or other performance requirements; (2) fires, or localized flooding, caused by the Contractor or any subcontractor that may be involved; (3) by other fault or negligence of the Contractor or any subcontractor that may be involved; or (4) normal weather.

**(d) Excusable Causes, All Contracts.** Unless the Contractor's default is due to an inexcusable cause noted above, the default is excusable if it arises from unforeseeable causes beyond the Contractor's control. Examples of such causes include acts of another contractor in the performance of a contract with the University or Government; acts of the Government or University in either a sovereign or contractual capacity; acts of the public enemy; earthquakes, floods, or other acts of God; epidemics; fires; freight embargoes, quarantine restrictions; strikes; and unusually severe weather.



**(e) Excusable Causes, National Emergency Contracts.** If this contract was awarded explicitly under a national emergency, then except for the inexcusable causes noted above, the cause of the Contractor's default does not have to be unforeseeable to be excusable; the cause merely has to be beyond the Contractor's control. Examples are all of the examples listed in (d) above plus abnormal weather.

**(f)** The University shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the University for **(1)** completed work for which no separate price is stated, **(2)** partially completed work, **(3)** other property described above that it accepts, and **(4)** the protection and preservation of the property. Failure to agree will be a dispute under the *Disputes/Arbitration* clause. The University may withhold from these amounts any sum the University judges necessary to protect the University or Government against loss from outstanding liens or claims of former lien holders.

**(g) No Waiver.** If the University is entitled under this clause to issue a notice of default and terminate some or all of the contract work but does not do so, such forbearance shall not waive the liability of the Contractor and its sureties for any damages (including excess costs incurred by the University or Government in completing the work) to the University or Government resulting from the Contractor's refusal or failure to complete the work within the specified time. However, in such event, the Contractor may still plead, if done timely, excusable causes as above.

**(h)** If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the University and Government.

**(i)** The rights and remedies of the University and Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **A74, Suspension of Work**

**(a)** The University may order the Contractor in writing to suspend, delay, or interrupt all or any part of the contract work for a period of time the University determines appropriate for its convenience.

**(b)** If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted **(1)** by an act of the University in the administration of this contract, or **(2)** by the University's failure to act within the time specified in the contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable actions and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of the contract.

**(c)** A claim under this clause shall not be allowed **(1)** for any costs incurred more than 20 days before the Contractor has notified the University in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and **(2)** unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final contract payment.

#### **A75, Termination—Debarment**

A breach by the Contractor of the contract clauses entitled *Davis-Bacon Act*, *Contract Work Hours and Safety Standards Act—Overtime Compensation*, *Apprentices and Trainees*, *Payrolls and Basic Records*, *Compliance with Copeland Act Requirements*, *Subcontracts—Labor Standards*, *Compliance with Davis-Bacon and Related Act Regulations*, or *Certification of Eligibility* may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

#### **A76, Withholding of Funds**

**(a)** This clause does not apply to apprentices, trainees, engineers-in-training (EITs), architect interns, or other persons performing solely under the architect-engineer portion of the contract.

**(b)** The DOE Contracting Officer shall, upon his own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract (or any other Federal contract with the University, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements that is held by the University) so much of the accrued payments or advances as may be considered

necessary to pay laborers and mechanics (including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor) the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic (including any apprentice, trainee, or helper, employed or working on the site of the work) all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, suspend further payment, advance, or guarantee of funds until such violations have ceased.

#### **A77, Interest**

(a) Except as otherwise provided in this contract, all amounts that become payable by the Contractor to the Government—or to the University on behalf of the Government—under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. §1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be (1) for the period in which the amount becomes due as provided in (b) of this clause, the interest rate established for such period by the Secretary of the Treasury under §12 of the *Contract Disputes Act of 1978* (Public Law 95-563; and (2) thereafter until the amount is paid at the rate applicable for each 6-month period as so established by the Secretary of the Treasury.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the University or Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.614-2 in effect on the date of this contract.

#### **A78, Release of Information**

The interest of the University or the government, including DOE, in this contract shall not be indicated in any advertising or publicity without advance written approval of the Contract Administrator.

#### **A79, Assignment of Claims**

(a) The contract or any right, remedy, or obligation hereunder is assignable in whole or in part by the University to the Government or its designee. Under the *Assignment of Claims Act*, as amended, 31 U.S.C. §3727, 41 U.S.C. §15 (hereinafter referred to as the *Act*), the Contractor may assign its rights to be paid amounts due or to become due because of the performance of the contract to a bank, trust company, or other financial institution, including any federal lending agency. The assignee may further assign or reassign its right to any bank, trust company, or other financial institution.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under the contract and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract.

(c) The Contractor shall not furnish or disclose to any assignee any classified document, including the contract, or information related to work under the contract unless the University authorizes such action in writing.

#### **A80, Assignment of Contract**

The contract or any right, remedy, or obligation arising out of the contract is assignable in whole or in part by the University to the Government or its designee. Except as to any payment due hereunder, the contract is not assignable by the Contractor without the written approval of the University.

#### **A81, Entire Agreement**

This contract embodies the entire agreement between the University and the Contractor and supercedes all prior oral or written agreements. The parties shall not be bound by, or be liable for any statement, representation, promise, inducement, or understanding not set forth herein. No amendments or modifications of any of the terms or conditions

shall be valid unless reduced to writing and signed by both parties. No terms and conditions appearing on any form originated by the Contractor shall be applicable.